

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES R. HAUSMAN,
Plaintiff,
v.
HOLLAND AMERICA LINE-U.S.A., *et al.*,
Defendants.

No. 2:13-cv-00937-BJR

**DEFENDANTS' MOTION TO VACATE
JUDGMENT AND FOR DISMISSAL,
OR ALTERNATIVELY MOTION TO
VACATE JUDGMENT AND FOR NEW
TRIAL BASED ON PLAINTIFF'S
FRAUD ON THE COURT, WILLFUL
VIOLATION OF THIS COURT'S
DISCOVERY ORDER, INTENTIONAL
DESTRUCTION OF EVIDENCE, AND
WITNESS TAMPERING (Evidentiary
Hearing Requested)**

NOTE ON MOTION CALENDAR:
Friday, December 4, 2015

I. RELIEF REQUESTED

Defendants Holland America Line-USA, *et al.*, move the Court to Vacate the Judgment rendered in this matter (Dkt. #207) and for either Dismissal or, alternatively, for New Trial Based on Plaintiff's Fraud on the Court, willful violation of this Court's discovery Order (Docket No. 66), Intentional Destruction of Evidence and Witness Tampering. This Motion is

brought pursuant to Fed. R. Civ. P. Rules 59 and 60(b)(2), (b)(3) and (b)(6), as well as under the Court's inherent powers to vacate judgments and dismiss cases for fraud on the court, willful violation of court orders, willful discovery misconduct and tampering with evidence, all of which was discovered on November 10, 2015 after the verdict was rendered in this action. This Motion is supported by the Declaration of Amy Mizeur, which details that Plaintiff James Hausman: (1) willfully and systematically destroyed evidence after being ordered by this Court to preserve and produce it; (2) fabricated evidence with the intention that one of his treating physicians would rely upon it; and (3) tampered with at least one witness, including suborning perjury of a fact witness. As detailed in the Declaration of Louis Shields, the above facts and misconduct were not known to Defense counsel or Defendants until after the verdict in this action was rendered when Former Gold Center/Hausman employee Amy Mizeur contacted Defense counsel to report Plaintiff Hausman's misdeeds and other sanctionable acts previously unknown to Defendants or defense counsel, and to apologize for her role in committing this fraud. HOLLAND AMERICA submits with this Motion the sworn Declaration of Ms. Mizeur (an independent witness formerly employed as Personal Assistant to Mr. Hausman), which presents clear and convincing evidence of Plaintiff's extensive misconduct, requiring the imposition of Relief from Judgment and other remedies, as HOLLAND AMERICA requests.

Jones v. Aero/Chem Corp., 921 F.2d 875, 878-79 (9th Cir. 1990).

II.

PLAINTIFF'S INTENTIONAL ACTS OF MISCONDUCT MANDATE VACATING THE VERDICT AND JUDGMENT AND OTHER SANCTIONS

A. Plaintiff Intentionally Violated An Express Order of this Court by Willfully and Intentionally Destroying Evidence He Had Been Ordered to Produce and Causing Another Witness to Likewise Destroy Evidence

1 In this trial, there was no dispute that Plaintiff had been struck by an automatic door
 2 onboard one of Defendants' ships. Rather, the primary dispute at trial involved the nature and
 3 extent of Mr. Hausman's claimed damages including his claims that the accident had altered
 4 his relationships with his wife and family and that he could not perform certain routine
 5 activities due to his alleged head injury. In an effort to test the veracity of these claims and to
 6 determine whether there may have been alternative sources of claimed changes in his family
 7 relationships or alleged physical or mental impairments, Defendants requested production of
 8 all Plaintiff's emails on a variety of subjects. Plaintiff objected to the request and Defendant
 9 was forced to file a Motion to Compel. (See, Dkt #61; see also Asia N. Wright Decl. ¶¶2-5).
 10 Ultimately, the Court ruled Plaintiff must produce all emails *from all accounts* containing
 11 specific words. (Wright Decl. ¶8; See, Dkt #66).¹

12
 13 At the time of the Court's discovery Order, Amy Mizeur was Plaintiff's personal
 14 assistant at his gold business where she and Plaintiff shared a single physical office. (Mizeur
 15 Decl. at ¶¶2-3). When Plaintiff received the Court's Order requiring him to produce his
 16 emails, Plaintiff panicked, fearing that the disclosure of the emails would damage his case.
 17 (Mizeur Decl. at ¶17). Following the verdict in this action, Ms. Mizeur came forward and
 18 revealed to Defendants that, in what can only be described as a shocking intentional and
 19 flagrant fraud on the court and violation of this Court's discovery Order, Plaintiff thereafter
 20 ordered Ms. Mizeur to immediately delete all emails he had ever sent to her. Plaintiff, who

21 ¹ Plaintiff's counsel agreed to produce all emails from all accounts containing the words "seizure[s],"
 22 "headache[s]," "dizzy," "dizziness," "vertigo," "Holland," "HAL," "not the same," "bi-parting
 23 automatic door[s]," "automatic door[s]," "sensor[s]," "door /s injur!," and "door /s [faulty OR broken
 OR damaged OR defective]." (Wright Decl. ¶8). In addition, the Court's Order required Plaintiff to
 also produce all Emails containing the words "injury," "cruise," "lawsuit," "sue," "litigation" and
 "door."

1 routinely carries guns on his person, then personally stood over Ms. Mizeur to ensure she
2 complied with his demand to destroy this potentially damning evidence.

3 *"Immediately after he learned of the Court's order requiring him to turn over his*
4 *emails to HAL, Mr. Hausman immediately ordered me to delete all the emails he had*
sent to me. He stood over me and my computer to make sure I did what I was told."

5 (*Id.* at ¶18). Further, Ms. Mizeur (who shared an office with Plaintiff) then personally
6 witnessed Plaintiff spending the multiple days deleting his own emails from his own work
7 computer.

8 *"I also personally observed Mr. Hausman deleting substantial amounts of emails from*
9 *his computer. He spent multiple days in the office working at the computer to search*
10 *words and delete the emails that he did not want to produce. Mr. Hausman told me in*
a panic "I have to get these [emails] out of here."

11 (*Id.* at ¶20). Evidencing Mr. Hausman's knowing and intentional effort to defraud the Court
12 and Defendants, he then discussed with Ms. Mizeur how he could destroy the hard drive on his
13 computers so that Defendants would not be able to tell he had deleted emails after receipt of
14 the Court's Order.

15 *"Mr. Hausman and I discussed how HAL might be able to see that he had deleted*
16 *emails. We discussed the possibility of hiring an outside vendor to "scrub" the*
17 *computer. Mr. Hausman also mentioned that he could destroy the hard drive by using*
large magnets. He told me that a magnet would "destroy everything," but we
discussed that Holland America likely would be able to see evidence of that."

18 *"At around this same time, Mr. Hausman told me that the hard drive on his personal*
19 *home computer "fried." After working to replace the hard drive, he told me he put a*
magnet on the old hard drive to damage it...."

20 (*Id.* at ¶¶21-22). None of this was known by Defendants until after trial. (Decl. of Louis
21 Shields, ¶¶2-3). Despite being ordered to delete all her emails from Plaintiff, Ms. Mizeur was
22 able to resurrect some of her deleted emails, including messages which were not produced in
23 direct violation of the Court's discovery Order. (See Exs. 1 & 2 to Mizeur Decl.).

1 Although Plaintiff initially had claimed producing his emails would be unduly
 2 burdensome because he maintained a large volume of emails, almost two months after receipt
 3 of the Court's Order, Plaintiff produced a limited number of emails and claimed other emails
 4 were unavailable because "Mr. Hausman's practice has always been to regularly delete the
 5 'sent' and 'deleted' folders from his personal email accounts." (Wright Decl. ¶¶15-19² & Ex.
 6 9, 2:18-20 thereto). This was yet another fabrication in an effort to falsely convince
 7 Defendants there were no other emails. This newly discovered evidence from Ms. Mizeur
 8 demonstrates that Plaintiff had no such practice, that prior to receipt of the Court's Order he
 9 had kept emails going back at least ten years, and that he only systematically deleted emails
 10 after receipt of the Court's Order and for the purpose of avoiding disclosure of information that
 11 might undermine his lawsuit.

12
 13 *"Prior to this time, I had never observed Mr. Hausman deleting emails (other than junk*
 14 *mail type emails). Often times we would search his old emails to locate old records for*
 15 *tax purposes or business dealings. I remember one occasion where [we] searched*
 16 *[and] located some emails that were from as far back as 2003. Mr. Hausman did not*
 17 *have a practice of routinely deleting sent, received or deleted emails. In fact, I had*
 18 *never observed him deleting emails other than when he was ordered to produce them in*
 19 *the lawsuit (and obvious junk mail as noted above)."*

20 (Mizeur Decl. at ¶23). Suspiciously, every email Plaintiff produced in this litigation was from
 21 his Hotmail email account. The emails he ordered Ms. Mizeur to destroy clearly show he also
 22 maintained and actively used a Yahoo email account (*jimrhausman@yahoo.com*). Yet Plaintiff
 23 did not produce even a single email from this account. (Mizeur Decl. ¶24 & Ex. 2 thereto;
 Wright Decl. at ¶21). The undisclosed emails even show that Plaintiff apparently intentionally

² Prior to this response, Plaintiff had objected claiming the request would impose an undue burden because he had large number of emails. He made no mention of his "practice" regularly deleting emails. Plaintiff's Response to Defendants' Tenth Set of Interrogatories. Ex. 6 to Wright Decl.

1 used the Hotmail email account for mail he expected might be disclosed, but used the
 2 undisclosed Yahoo email account for messages he wanted to keep hidden. For example, a
 3 December 7, 2013 email sent by Plaintiff through his yahoo account to Ms. Mizeur
 4 demonstrates his intentional use of the disclosed Hotmail account to create false information
 5 while using the undisclosed yahoo account for private communication. "*Amy – Just sent you a*
 6 *BS message on hotmail.*" (See Ex. 2 attached to Mizeur Decl.).

7 Plaintiff continued the falsehood even through trial where he feigned a lack of interest
 8 in the issue of his emails and claimed he was never asked to review them. (Wright Decl. at Ex.
 9 12, pp. 13:22-1, 14:11-24 and 15:1). Plaintiff specifically denied at trial spending any time
 10 looking through emails he was supposed to review in response to discovery requests and the
 11 Court's Order. (*Id.*). Contrary to his testimony at trial, Mr. Hausman was very interested in
 12 his emails and engaged in a willful, knowing and sinister effort to conceal emails that might
 13 damage his case by providing alternative explanations for his claimed relationship problems or
 14 which might undermine his damage claims. (Mizeur Decl. at ¶17). He not only deleted many
 15 of his own emails, but also he directed his employee, Ms. Mizeur, to delete her emails and then
 16 he personally made sure she complied by personally supervising her evidence destruction. He
 17 even went so far as to intentionally destroy the hard drive of his home computer to prevent
 18 Defendant from detecting his fraud. (*Id.* at ¶¶17-24). Ms. Mizeur, fearful of being fired or
 19 harmed by Plaintiff, was intimidated from coming forward. (*Id.* at ¶47). This conduct alone
 20 mandates setting aside the verdict and dismissing Plaintiff's case (or alternatively ordering a
 21 new trial) – but there is more.

22 **B. Plaintiff Concocted False Medical Evidence Causing His Medical Experts**
 23 **to Give False Evidence at Trial and Concealed Medical Evidence of Other**
Medical Conditions that Could Be Causing His Symptoms

1 In a further effort to manipulate the legal process, Plaintiff created false medical
 2 evidence for his medical experts so that they would support his claims at trial. On two
 3 occasions Plaintiff's physician or expert gave him a medical device to wear on his head to
 4 capture possible seizure activity. However, unbeknownst to Defendants (and presumably also
 5 unbeknownst to the doctor) Plaintiff artificially attempted to cause the device to register
 6 abnormal brain activity.
 7

8 *"There were two occasions when Mr. Hausman's physicians gave him a medical device*
 9 *to wear on his head to "capture" seizure activities. One morning after wearing the*
 10 *medical device on his head, Mr. Hausman told me that he did not have any "seizures"*
 11 *Mr. Hausman also told me that he and Mrs. Hausman "purposefully fought" to see if*
 12 *they could induce a seizure or get the monitor to register abnormal brain activities."*

13 (Mizeur Decl. at ¶¶30-31). In addition, at one point Plaintiff directed Ms. Mizeur to prepare a
 14 written summary of her interactions with Plaintiff so that Plaintiff could provide this
 15 "evidence" to Dr. Fortin. However, rather than giving her written summary to the doctor,
 16 Plaintiff took Ms. Mizeur's written summary home, had it revised and embellished, and then
 17 instructed Ms. Mizeur sign the false statement.

18 *"Mr. Hausman also directed me to prepare a summary of my interactions with him to*
 19 *provide to Dr. Fortin. Mr. Hausman took the summary home for his wife Mrs.*
 20 *Hausman to revise. The next day Mr. Housman instructed me to sign the revised*
 21 *statement which contained inaccuracies because of the revisions and embellishments*
 22 *that had been added. Although the summary was no longer truthful, I signed it*
 23 *because I feared Mr. Hausman would fire me if I did not."*

19 (Mizeur Decl. at ¶15). In a final effort to conceal other possible medical causes of his claimed
 20 problems, Plaintiff systematically had his staff review documents being produced to Holland
 21 America to ensure nothing contained any mention of a medical problem that he had related to a
 22 tick bite or the fact he had found a tick embedded in his skin. (Mizeur Decl. at ¶29). Mr.
 23

Hausman also watched videos of people having legitimate seizures on the internet to ensure he know what a seizure was supposed to look like. (Mizeur Decl. at ¶26).

C. Plaintiff Instructed His Employees to Lie About His Drinking to Conceal His Alcoholism (Which Would Explain His Behavior, Family Problems, and Memory Issues) and About His Marital Problems When They Were Interviewed By the Defense

In preparing its defense of Plaintiff's claims, Holland America's attorneys conducted extensive interviews of Plaintiff's employees, including Ms. Mizeur. One of the topics of these interviews was Plaintiff's drinking habits. Before Ms. Mizeur's interview with Defendant's representative, Plaintiff himself instructed her "not to tell the truth" about his drinking.

"During this preparation for the interview, Mr. Hausman ordered me not to tell the interviewers that he had moved out of his house and was living by himself at local hotels. He also had me deliver cases of beer to the hotels so that such purchases would not show up on the hotel receipts. Mr. Hausman frequently paid cash for his purchases when I was with him.

Mr. Hausman also told me to not tell the truth about the amount of beer he drank on a daily basis (approximately one case of 24 cans per day). He told me that information on the amount of alcohol he drank would undermine his case as HAL would use his drinking as evidence to explain his behavior and memory issues. I observed Mr. Hausman drinking many cans of beer every day and evening that I was with him. He kept a refrigerator in our office fully stocked with at least two cases of beer at all times.

Mr. Hausman told me how to respond to the interviewer's questions so the truth would not come out. For example he told me to say things like "its hard to keep track" or "I'm not sure" when asked questions by the interviewers that might make his actions sound bad or damage his case."

(Mizeur Decl. at ¶10-12). To make sure Ms. Mizeur followed his order to "not tell the truth" Plaintiff himself insisted upon secretly listening to Ms. Mizeur's phone interview and even made her write down on paper what was being asked so that he could follow the conversation. Plaintiff would signal Ms. Mizeur when he wanted her to stop talking or to say less. (Mizeur

Decl. at ¶13). Plaintiff even monitored other employees interviews with Holland America's defense team over his company's closed circuit surveillance system. (Mizeur Decl. at ¶8).

D. Plaintiff Interfered with Defendant's Ability to Learn About Conduct that Directly Contradicted Claims Made in His Lawsuit About His Ability to Drive Long Distances, His Balance, His Ability to Climb and Use Tall Ladders, Etc.

Ms. Mizeur had unique knowledge that Plaintiff was fabricating or exaggerating his damages. For example, she rode as a passenger with him to his cabin in Wisconsin (500 mile drive) on multiple occasions but he instructed her to always tell people that she had driven as he did not want people to know he was able to drive that lengthy distance, including driving over lengthy bridges, without difficulty. (Mizeur Decl. at ¶¶32-33). She was able to observe him climbing ladders without difficulty, cleaning snow off tall roofs without difficulty, walking without difficulty, balancing without difficulty, walking while on a moving boat without difficulty, working lengthy hours including weekends without difficulty. (Mizeur Decl. at ¶¶34-42). This information directly contradicts what Plaintiff had claimed in his deposition where he alleged his injuries affected his ability to do even simple chores:

Q Do your injuries affect your ability to do chores?

A Yes.

Q How?

A That I can't be on a ladder any more, I mean, stuff as simple as changing a light bulb, I can't get up, height, I'm not supposed to do anything where I can increase my chance of getting hurt.

Q If you look up does that trigger any symptoms?

A Yes.

(Pl.'s Dep. at 139: 5-13, Ex. 13 to Wright Decl.). Plaintiff wanted to ensure Holland America discovered none of this so he personally directed Ms. Mizeur to conceal all of this from Holland America.

1 *"At Mr. Hausman's direction, I intentionally withheld information from the HAL*
 2 *investigators on many relevant issues, including the following: 1) that I was Mr.*
 3 *Hausman's personal assistant; 2) that I shared an office with him; 3) that I worked 8-*
 4 *12 hours per day with him; 4) that I had driven with him to Hayward Wisconsin 10-12*
 times; 5) that I had observed him climbing ladders, working up on the roof of his
 Hayward home, operating and loading a boat and transporting and carrying cases of
 coins and metals weighing up to 70-75 lbs each."

5 (Mizeur Decl. at ¶46). Ms. Mizeur's forty-eight paragraph Declaration includes many
 6 additional details evidencing Plaintiff's misconduct and fraud.³ Plaintiff's intentional
 7 interference with Defendant's ability to investigate his claim has permanently tainted this
 8 proceeding and prejudiced Defendant's ability to investigate and defend the claim. Had Mr.
 9 Hausman not instructed Ms. Mizeur to lie, conceal and destroy evidence, Defendant would
 10 have known all this information and would have called her as a crucial witness at trial.⁴
 11 Holland America would never had discovered any of this but for Ms. Mizeur's decision to
 12 contact Defense counsel after trial because she knew what she had done was wrong and
 13 because she *"feel[s] guilty having allowed Mr. Hausman to manipulate the Court by*
 14 *destroying evidence and fabricating or exaggerating his claimed injury."* (Mizeur Decl. at
 15 ¶47-48).

16 The conduct outlined in the lengthy Declaration of Ms. Mizeur evidences an overt and
 17 concerted pattern of behavior by Plaintiff intended to destroy evidence, tamper with witnesses,
 18 violate this Court's discovery Order, and to prevent Holland America from presenting an
 19

20
 21 ³ Tellingly, during this time, Plaintiff rewarded Ms. Mizeur for her assistance and for her loyalty with cash
 payments that he placed in her purse and with a credit card which he paid. (Mizeur Decl. at ¶¶27-28).

22 ⁴ Just by way of example, if called as a witness Ms. Mizeur's information also would have shown that Mr.
 23 Hausman testified falsely in his deposition about his gun shooting when he testified that since the accident he had
 never shot guns with anyone other than Steve. (Pl.'s Dep. at 115: 10-13, Ex. 13 to Wright Decl.). Ms. Mizeur
 directly contracts this testimony as Mr. Hausman purchased a gun for her and taught her how to shoot it at the
 firing range. (Mizeur Decl. ¶44).

1 accurate defense to his damage claims. Her Declaration attaches various documents and
2 photographs that corroborate her testimony.

3 For the foregoing reasons, this Honorable Court should immediately set aside the
4 Verdict and Judgment and dismiss Plaintiff's case with prejudice (or alternatively order a new
5 trial). Defendant respectfully submits that no lesser relief will be adequate to dislodge and
6 avoid the fraud and misinformation injected into this process by Plaintiff, clearly resulting in
7 the patently unjust result reflected in the Judgment.

8 9 III. ARGUMENT

10 As not less than the U.S. Supreme Court has held, a Court may grant a new trial under
11 Rule 59 if the "trial was not fair to the party moving." *Montgomery Ward & Co. v. Duncan*,
12 311 U.S. 243, 251 (1940). In ruling on a Fed. R. Civ. P. 59 motion, a court "can weigh the
13 evidence and assess the credibility of the witnesses" and can grant a new trial, including raising
14 *sua sponte* its own concerns "on any ground necessary to prevent a miscarriage of justice."
15 *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd*, 762 F.3d 829, 842 (9th Cir. 2014). If
16 considering a dismissal for fraud on the court, the Court should conduct an evidentiary hearing
17 allowing it to hear from Ms. Mizeur or other witnesses on this important miscarriage of justice.

18 Alternatively, Rule 60 provides a further basis upon which a Court may relieve a party
19 from a final judgment where there is evidence of: "(2) newly discovered evidence that, with
20 reasonable diligence, could not have been discovered in time to move for a new trial under
21 Rule 59(b), ... (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or
22
23

misconduct by an opposing party,” or “(6) any other reason that justifies relief.”⁵ Fed. R. Civ. P. 60(b)(2), (3) and (6).

To prevail on such grounds, the moving party must prove by (1) clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct, and (2) that the conduct complained of prevented either the full and fair preparation or presentation of the case. *Jones*, 921 F.2d at 878-79. The Declaration of Amy Mizeur filed herewith establishes this and more.

Further, “when the case involves the withholding of information called for by discovery, the party need not establish that the result in the case would be altered.” *Jones*, 921 F.2d at 879 (citing *Bunch v. United States*, 680 F.2d 1271, 1283 (9th Cir. 1982)). Rather, the moving party is entitled to a **presumption** of substantial interference. *Id.* (citing *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923-27 (1st Cir. 1988)). Regardless of the presumption of substantial interference, Plaintiff’s misconduct here, as he intended and designed it, altered the preparation and presentation of the case and greatly prejudiced Holland America’s ability to defend Plaintiff’s case.

Where a party asserts that such misconduct has occurred, a district court “must make a fresh determination” by conducting a hearing on whether the moving party has demonstrated the worth of the material withheld as trial evidence or by elucidating its value as a tool for obtaining meaningful discovery. *Jones*, 921 F.2d at 879. Defendants are fully prepared to conduct a hearing if the Court so directs, and will make all necessary arrangements to have Ms. Mizeur appear before the Court. Alternatively, the Court simply may set aside the judgment

⁵ Rule 60(b)(2) and (3) grounds may also be used here for a new trial under Rule 59 as HAL’s motion is brought within the 28-day time limit under Rule 59. *See Jones*, 921 F.2d at 878-79.

1 and enter a dismissal because of the numerous and clear violations of its discovery order. *See*
 2 *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 349 (9th Cir. 1995)
 3 (expressly approving dismissal where plaintiff provided false evidence); *Huntley v. City of*
 4 *Carlin*, 2014 U.S. Dist. LEXIS 113573, *4 & 19-21 (D. Nev. Aug. 14, 2014) (federal court has
 5 inherent power to dismiss based on plaintiff's deceptive conduct). Based on Plaintiff's
 6 misconduct and violation of the Court's Order, HOLLAND AMERICA requests the verdict
 7 and judgment be immediately set aside and the matter be dismissed in whole and with
 8 prejudice. Alternatively, and at a minimum, the Court should order a new trial and order such
 9 other relief as the court may consider fair and just under these extraordinary circumstances.

10 In assessing misconduct under subsection (b)(3) of Rule 60, the Ninth Circuit noted that
 11 "[f]ailure to disclose or produce materials requested in discovery can constitute 'misconduct'
 12 within the purview of this subsection." *Jones*, 921 F.2d at 879 (quoting with approval
 13 *Anderson v. Cryovac, Inc.*, 862 F.2d 910, (1st Cir. 1988)). "'Misconduct' does not demand
 14 proof of nefarious intent or purpose as a prerequisite to redress." 921 F.2d at 879. "The term
 15 can cover even accidental omissions...." *Id.* In this case there is no doubt, however, that
 16 Plaintiff's misdeeds are not merely accidental omissions. There is no scenario under which a
 17 party's decision to destroy a computer hard drive by using strong magnets immediately after
 18 receipt of a Court order requiring production of information from that computer can be
 19 considered "accidental."

20 In *Jones*, the plaintiff appealed from the denial of a motion for a new trial following an
 21 adverse jury verdict in her product liability action. *Jones*, 921 F.2d at 876. Two days after the
 22 verdict, counsel for a third-party defendant gave to the plaintiff's lawyer copies of
 23 correspondence, which had not been produced in discovery to plaintiff. *Id.* at 877. Although

1 the district court denied a new trial under Rule 59, despite newly discovered evidence, it
 2 indicated it might later hold a hearing to determine whether defendant's failure to produce the
 3 documents involved misconduct. *Id.* The Ninth Circuit agreed and held that when there is
 4 discovery misconduct, Rule 59 must borrow from cases interpreting Rule 60(b)(3). *Id.* at 878.
 5 Under this standard, discovery misconduct, including even accidental nondisclosure, is
 6 sufficient misconduct to grant a hearing to determine appropriate relief.

7 A failure to produce requested emails ordered by the Court to be produced, violates a
 8 direct court Order; doing so with the intent to destroy legitimate evidence is fraud. It is
 9 unlawful for anyone to attempt to so or to destroy email with the intent to impair the ability for
 10 it to be used in a legal proceeding. 18 U.S.C. § 1512(c). For example, in *United States v*
 11 *Burge*, 711 F.3d 803, 808-809 (7th Cir. 2013), a jury convicted the defendant of violating
 12 Section 1512(c) for giving false responses to written interrogatories. The Seventh Circuit
 13 upheld the conviction, noting that, "[v]ery few defendants shred incriminating papers in plain
 14 view of a presiding judge. Obviously, the statute must apply to destruction of documents
 15 performed in advance of an official proceeding." *Burge*, 711 F.3d 809.

16 As noted above, Mr. Hausman's supplemental discovery response states "Mr.
 17 Hausman's practice has always been to regularly delete the "sent" and "deleted" folders from
 18 his personal email accounts." (Wright Decl. Ex. 9, 2:18-20). This response was aimed to
 19 mislead Defendants and cover-up the fact that Plaintiff did not routinely delete emails as part
 20 of a routine, but rather he deleted them intentionally out of concern that they would undermine
 21 his case after learning of a court Order requiring their production. (Mizeur Decl. ¶¶17-23).
 22 Mr. Hausman not only conspired to hide the fact that he had destroyed pertinent and responsive
 23 emails, but also, he took steps to conceal his misdeeds by placing a magnet on his home

1 computer's hard drive. (Mizeur Decl. ¶22). Mr. Hausman's false discovery responses and his
 2 destruction of emails in the face of a Court Order to produce them, constitutes intentional
 3 misconduct.

4 Recognizing the principle that means are as, or more, important as the result, "Rule
 5 60(b)(3) is aimed at judgments that were unfairly obtained, not those which are factually
 6 incorrect." *De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000). "There
 7 is no point to a lawsuit, if it merely applies law to lies. True facts must be the foundation for
 8 any just result." *Valley Engineers Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1058 (9th
 9 Cir. 1998). As is clearly established in Ms. Mizeur's declaration, Plaintiff Hausman willfully,
 10 egregiously and fraudulently destroyed and created evidence, and tampered with the testimony
 11 of at least one witness. In *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. Mass.
 12 1989), the Court stated:

13 'Fraud on the court' occurs where it can be demonstrated, clearly and
 14 convincingly, that a party has sentiently set in motion some
 15 unconscionable scheme calculated to interfere with the judicial system's
 16 ability impartially to adjudicate a matter by improperly influencing the
 trier or unfairly hampering the presentation of the opposing party's claim
 or defense.

17 *Aoude* at 1118. While taking many forms, corrupt intent knows no stylistic boundaries;
 18 fabrication of evidence is a near-classic example of the genre. Here, Plaintiff revised Ms.
 19 Mizeur's summary of interactions with him to present a false record to his treating physician.
 20 (Mizeur Decl. ¶¶15-16). At one point, Mr. Hausman admitted to Ms. Mizeur that he did not
 21 "have a seizure," but rather intentionally tried to make his medical monitor record abnormal
 22 brain activity. (*Id.* at ¶31). Plaintiff's actions constitute misconduct, requiring relief.

1 In addition to destroying documents and giving false answers to discovery requests, it is
 2 unlawful for a person to attempt or corruptly persuade another person or engage in misleading
 3 conduct toward another person, with intent to (1) influence, delay, or prevent the testimony of
 4 any person in an official proceeding; or (2) cause or induce any person to withhold testimony,
 5 or withhold a record, document, or other object, from an official proceeding. 18 U.S.C. §
 6 1512(b); *United States v Ortiz*, 367 F Supp. 2d 536, (S.D.N.Y 2005).

7 Here, Mr. Hausman not only destroyed emails (and tellingly failed to produce any
 8 emails from his secret Yahoo account), he stood over and directed Ms. Mizeur to destroy her
 9 emails received from him. (Mizeur Decl. ¶18). Furthermore, Mr. Hausman instructed Mizeur
 10 how to respond to questions from Holland America's defense team to prevent discovery of
 11 critical evidence and specifically instructed her to lie on several critical issues. (Mizeur Decl.
 12 ¶¶12-13). He also secretly sat in the room with Ms. Mizeur while she was interviewed,
 13 influencing her responses. *Id.* In addition, he provided gifts to his treating physician, Dr.
 14 Fortin, to influence his findings, and engaged in misleading conduct by creating a false account
 15 by Mizeur. (*Id.* at ¶16). All of these intentional deceptive acts amount to misconduct requiring
 16 reparation.

17 As the Ninth Circuit explained in *Jones, supra*, when considering a motion based on
 18 misconduct, correspondence withheld from discovery may substantially interfere with a party's
 19 ability to fully and fairly present the case – for example, concealment of knowledge about an
 20 issue may have “precluded inquiry into a plausible theory of liability.” *Jones*, 21 F.2d at 879
 21 (citing *Anderson*, 862 F.2d at 925).⁶ Mr. Hausman's destruction of his email correspondence
 22

23 ⁶ Likewise in *Anderson*, the court found misconduct because plaintiffs demonstrated defendant knew, or was charged with knowledge, of the missing document, and had constructive (if not actual) possession

1 and his non-disclosure of emails from his yahoo account, precluded Defendants from inquiry
 2 into his motives for viewing such email as damaging to his case as well as having experts
 3 opine on his cognitive ability in making such calculating (and strategically sinister) decisions.

4 As to trial, Plaintiff's failure to disclose that he had destroyed email and his affirmative
 5 testimony that he had not done so intentionally, but as part of a routine, was designed to
 6 mislead the defense and this Court. Had he properly responded to discovery, Defendant could
 7 have cross-examined Mr. Hausman about his motivations and about the conduct detailed in the
 8 Mizeur declaration and certainly would have called Ms. Mizeur to testify. Also, of note, Ms.
 9 Mizeur was not disclosed as Mr. Hausman's *personal assistant*, who spent 8-12 hours per day
 10 with him and worked in the same physical room as Plaintiff. Had she been allowed to tell the
 11 truth, HOLLAND AMERICA would have learned about Plaintiff's use of ladders and other
 12 activities inconsistent with his claims made in discovery and at trial.

13 Importantly, there is a "presumption of substantial interference if [the moving party]
 14 can demonstrate the misconduct was sufficiently knowing, deliberate or intentional." *Jones*, 21
 15 F.2d at 879 (citing *Anderson*, 862 F.2d at 923-27, summarizing the applicable standards and
 16 burdens of proof). "Moreover, since parties ought not to benefit from their own mis-, mal-, or
 17 nonfeasance, uncertainties attending the application of hindsight in this area should redound to
 18 the movant's benefit." *Anderson*, 862 F.2d at 924 (citing *Minneapolis, St. Paul, & Sault Ste.*
 19 *Marie Ry. Co. v. Moquin*, 283 U.S. 520, 521-22 (1931) (litigant who engages in misconduct
 20 "will not be permitted the benefit of calculation, which can be little better than speculation, as
 21 to the extent of the wrong inflicted upon his opponent")). Accordingly, even if these actions

22 of it and did not divulge the document's existence. *Anderson*, 862 F.2d at 928. The court noted that
 23 "Another well-sculpted marker points out that misconduct need not be result-altering in order to merit
 Rule 60(b)(3) redress." *Anderson*, 862 F.2d at 924.

1 by Mr. Hausman, a licensed private investigator, a litigant in many other cases, and one who
 2 testified that he was fully aware of his discovery obligations, are explained as accidental non-
 3 productions, Defendant would be entitled to a presumption that Plaintiff substantially
 4 interfered with either the preparation or presentation of the case, or both, requiring relief.

5 IV. CONCLUSION

6 Plaintiff Hausman did not allow Defendants a full and proper hearing of the evidence
 7 because he destroyed relevant evidence, violated this Court's discovery Order, created fictional
 8 "evidence," and tampered with at least one witness instructing her to lie, and to hide or alter
 9 her testimonial knowledge. This misconduct allowed Plaintiff to present the jury a picture of
 10 impairment and disability, of "pain and suffering" and "loss of enjoyment of life," that was
 11 false, fabricated and the central element of the massive fraud committed in this Western
 12 District of Washington Court, and elsewhere. The breadth and the cynicism of Plaintiff's
 13 improper conduct, both the secret intentional behavior, and the false presentations made in
 14 Court, are stunning. Ms. Mizeur was and remains fearful that Mr. Hausman will level his
 15 wrath upon her once he learns of this Declaration and her confession of her involvement in
 16 Plaintiff's fraud. Nonetheless, she could not bring herself to stay silent, knowing what she
 17 knows, and hearing what she heard about the case, both in the press and from Mr. Hausman.
 18 Defendants appreciate that Ms. Mizeur finally listened to her true self, and decided to tell the
 19 truth; better late than never. For all of the foregoing reasons, Defendants respectfully request
 20 the Court vacate the verdict and judgment forthwith and dismiss Plaintiff's claims herein with
 21 prejudice. Alternatively, the court should vacate the verdict and judgment, order a new trial,
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 23

1 and impose all available remedies for this abuse by Plaintiff James Hausman of the system and
2 its honorable practices.⁷

3
4 DATED this 19th day of November, 2015.

5 s/Louis A. Shields

LOUIS A. SHIELDS, WSBA # 25740

6 s/Richard A. Nielsen

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Attorneys for HAL Defendants

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22 ⁷ At an absolute minimum, in the event this Court opts to order a new trial, Plaintiff should be precluded
23 from presenting any claim for punitive damages as a punishment for his own gross misconduct and
unclean hands.

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Seattle, Washington.

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